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COMMISSIONER

The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building

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April 1, 1985

You inquire whether rentals of automobiles to United States Government employees and their dependents are exempt from Massachusetts sales tax under each of the following circumstances:

- (1) when the employees or dependents use cash or their credit cards to pay for the rental;
- (2) when the employees use a government check to pay for the rental; and
- (3) when Department of Defense employees present a Travel Order at the time of the rental transaction.

Rentals are included in the definition of sales for purposes of the sales tax statute. G.L. c. 64H, §1(12)(a).

Sales to the United States or to an agency thereof are exempted from the Massachusetts sales tax. G.L. c. 64H, §6(d).

Generally, in order to be eligible for the exemption, a sale must be directly to the United States, or to a U.S. agency. See L.R. 83-62, p.2, last paragraph; L.R. 83-5.

However, sales not directly to the U.S. Government are exempt if the sales are to a purchaser who is an agent of the U.S. Government. The key factor in determining whether a purchaser is an agent of the U.S. Government for purposes of immunity of the sale from sales tax, is whether the credit of the purchaser or that of the United States is bound on the purchase. See Kern-Limerick, Inc. v. Scurlock, 347

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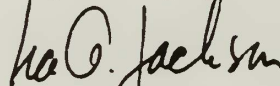
U.S. 110 (1954); Alabama v. King & Boozer, 314 U.S. 1 (1941); L.R. 81-58. -Even if the property is purchased by the purchaser for the U.S. Government, if the purchaser's credit is bound, the sale is not immune from sales tax. See United States v. New Mexico, 455 U.S. 720 (1982); L.R. 82-100.

Thus, where U.S. Government employees or their dependents use cash or their credit cards to rent cars, their own credit is bound, rather than the Government's. Whether the travel is for personal or government purposes is irrelevant. Therefore, rentals to U.S. Government employees or their dependents are not exempt from sales tax when such purchasers use cash or their credit cards to pay for the rental.

However, where U.S. Government employees use a Government check to pay for the rental, the credit of the U.S. Government is bound. The employee in this case is an agent of the U.S. Government for purposes of immunity of the sale from sales tax. Therefore, rentals are exempt from sales tax when U.S. Government employees pay for the rentals with a Government check.

Travel orders presented by U.S. government employees may be marked "authorized" or not so marked. When a U.S. Government employee presents a Travel Order marked "authorized," he pays for the rental with a government check. Thus the rental is exempt from sales tax. When a U.S. Government employee presents a Travel Order not marked "authorized," he pays for the rental himself. In this case, the rental is not exempt from sales tax.

Very truly yours,



Commissioner of Revenue

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